

X-5

IN THE DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH.

PROVO RESERVOIR COMPANY - - - - -Plaintiff, :
vs :
PROVO CITY - - - - - Defendant. :

#2888 civil

S T I P U L A T I O N .

It is hereby stipulated by and between the parties hereto by their respective counsels whose names are subscribed to this stipulation that when the decree is entered in this cause the waters of the Provo river and its tributaries awarded to the parties to this stipulation shall be as hereinafter stated.

1. That as to priority of right ^{judicially} the decree of the Fourth District Court in and for Wasatch County, State of Utah, in the case of the Wasatch Irrigation Company, et al, vs Edward M. Fulton, et al, entered May 6, 1899, be adopted as defining the rights of the parties to this action named in said decree from first to tenth class rights, inclusive, said waters to be measured at the head of the laterals.

2. That the Spring Creek Irrigation Company is entitled to a first class water right of one second foot for sixty acres of land irrigated for seven hundred and twenty acres; and the parties above the Midway upper dam that were not included in the Fulton decree that appropriated waters from Provo river and its tributaries prior to the filing of said decree are entitled to one second foot for seventy acres of land as irrigated at the time of said appropriation, and are entitled to be included in the classes of said decree according to its date of appropriation as classed in said decree.

3. That John A. Johnson is entitled to one and one-half second feet of water for ninety acres of land as a first class water right, and Phillip L. Ford is entitled as a first class water right to one second foot for the sixty acres of land irrigated by him; both of whom take said water from the river at the upper Midway dam.

4. That the Midway Irrigation Company and the parties whose waters the said company controls and distributes, are entitled to (a), five and one-half second feet of water as described in the said Fulton decree as coming from the Ontario Drain Tunnel, which is not a part of the natural flow of Provo river, to be diverted and measured at the Midway upper dam; (b), a first class water right to the waters of Snake creek, Pine creek and all springs heretofore used by them, and two and a half second feet of the waters of Provo river to be diverted at the Midway upper dam, or such portions thereof which, when added to the five and a half second feet of Tunnel water heretofore specified, will not exceed a quantity greater than one second foot for sixty acres of land irrigated, for three thousand, five hundred and eighty-five acres, exclusive of the Island ditch acres.

5. That the foregoing quantities constitute the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth classes of water of the parties to this cause that divert and appropriate the waters of Provo river and its tributaries in Wasatch and Summit counties.

6. That whenever the water flowing in said river and the canals of the parties heretofore stated exceeds in volume the aggregate of the quantities hereinbefore specified, then the parties to said findings and decree referred to in paragraph 1 hereof, are entitled to one second foot of water for each sixty acres of irrigated

land.

The foregoing amount is denominated as the eleventh class.

7. That whenever the water flowing in said river and the canals of the parties heretofore stated exceeds in volume the aggregate of the quantities hereinbefore specified, the Sage-brush Irrigation Company is entitled of such excess to one second foot of water for sixty acres of land irrigated, for five hundred acres.

The foregoing amount is denominated as the twelfth class.

8. That whenever the water flowing in said river and the canals of the parties heretofore stated exceeds in volume the aggregate of the quantities hereinbefore specified, the Midway Irrigation Company and parties whose waters the said company controls and distributes, are entitled of such excess, in addition to the quantity specified in paragraph 4, to be diverted at said upper Midway dam, to twelve and seventeen one-hundredths second feet, or such portion thereof which when added to the quantity specified in paragraph 4 as is necessary to and will not exceed a quantity greater than one second foot for sixty acres of land irrigated, as specified in paragraph 4.

The foregoing is denominated as the thirteenth class.

9. That whenever the water flowing in said river and the canals of the parties heretofore stated exceeds in volume the aggregate of the quantities hereinbefore specified as belonging to the parties above named, the following named parties are entitled of such excess to the following quantities:

(a) The Stewart ~~Brothers~~, ^{Ranch. 16.67} ~~ten~~ second feet for the irrigation of ¹⁰⁰⁰ ~~one hundred~~ acres of land. ^{amended to 1000 acres by motion in open court}

(b) The Timpanogas Irrigation Company, thirty-three

and thirty-three one-hundredths second feet for the irrigation of two thousand acres of land.

(c) The Extension Irrigation Company, thirteen and 33/100 second feet for the irrigation of eight hundred acres of land.

(d) The Sunrise Irrigation Company, two and 4/10 second feet of water for one hundred and forty-four acres of land.

The foregoing quantities are denominated as the fourteenth class.

10. That whenever the water flowing in said river and the canals of the parties heretofore stated exceeds in volume the aggregate of the quantities hereinbefore specified the Midway Irrigation Company and the parties whose waters the said company controls and distributes, are entitled to twenty second foot of such excess, to be diverted at the Midway upper dam, in addition to the quantity specified in paragraphs 4 and 8, or so much thereof as is necessary to supply to the three thousand, five hundred and eighty-five acres of land above the Island ditch, one second foot for sixty acres of said land.

The foregoing quantities are denominated as the fifteenth class.

11. That whenever the water flowing in said river and the canals of the parties heretofore stated exceeds in volume the aggregate of the quantities hereinbefore specified, the lands in Wasatch and Summit counties ^{not} ~~are~~ included in the foregoing that have been brought under an appropriation prior to September 15, 1908, are entitled of such excess to an amount of one second foot for sixty acres of such irrigated land.

The foregoing is denominated as the sixteenth class.

Morrison Res Co appl
Apr. 10-1908

12. During the period of September 15th to April 15th of the following year the parties ~~to the above entitled cause~~ in Wasatch and Summit counties and each of them are entitled only to the use of such portions of the amounts heretofore specified as their necessities may require, not to exceed one second foot for each seventy acres.

13. That to control and distribute the waters of Provo river and to insure the full measure of service from the waters of said river to all the parties to the above entitled cause the water commissioner shall have reasonable discretion, but such authority shall not interfere with the rights specified in the first to sixteenth classes, inclusive, as hereinbefore stated.

14. That whenever the water flowing in said river and the canals of the parties heretofore stated exceeds in volume the aggregate of the quantities hereinbefore specified as belonging to the parties above named, the said parties and each of them are entitled in proportion to their respective quantities before specified, of such excess in any and all irrigation seasons from May 1st to August 10th, *(except as provided in sec. 33.)* to an amount which when added to the quantities hereinbefore specified will amount to one second foot for forty acres of such specified land; and when the volume of flow is insufficient to supply one second foot for forty acres of such specified land, but is more than sufficient to supply the sixteen classes aforesaid, such amount is to be distributed to the said parties and each of them in proportion to the quantities heretofore designated, each of them receiving the same amount of water per acre of said specified land; that is, the duty shall range uniformly from forty acres to sixty acres per second foot of water.

The foregoing is denominated as the seventeenth class.

*Discretion of
Commissioner
as to duty is supplied*

*60 @ duty except
between May 1st to
Aug. 10th*

*With discretion
on Commission during
these dates*

*This does not
include water
to be let out
after dam.*

15. For the purpose of designation the following districts are numbered:

From and including the Stewart ranch down to the Hailstone ranch is designated as the First District.

From the Hailstone ranch down to and including the diversion at the upper Midway dam is designated as the Second District.

only 17th class
16. When the amount hereinbefore denominated as the seventeenth class is insufficient to supply the two districts above named, the full amount of said seventeenth class, and prior to June 25th of any year, the first district shall have the right to its full amount of said class against the second district.

17. That whenever the waters flowing in said river and the canals of the parties heretofore stated exceed in volume the aggregate of the quantities heretofore specified and all the parties to this stipulation are being supplied with amounts of water not less than the quantities found to be necessary for their beneficial uses, the commissioner may extend the time limit specified in paragraph 16.

18. That whenever a party to this stipulation in Wasatch or Summit County, by mishap or accident to canal or ditch, or by conditions that cannot be controlled, is deprived of its quantity of water and is in danger of sustaining material loss, and for immediate use for a period of one rotation, needs a quantity of water greater than its proportion of the volume of flow, and such additional quantity can be given to such party without material injury to the other parties to this stipulation, then it shall be the duty of the water commissioner to supply said additional quantity from the waters in excess of the first to sixteenth classes, inclusive, before specified.

The water commissioner₆ shall use due diligence and dis-

cretion to give the parties hereto the maintenance and development of the Provo river and shall use his discretionary authority to maintain and develop such river and to advance and maintain the crop production that is dependent upon said river.

19. That, except as specified in (a) and (b), paragraph 4, fixing the point of measurement where the flow of water in a canal is diminished by conditions that cannot be reasonably avoided, there shall be added to the amount sufficient water to make up such losses. In case the flow of a canal is increased such increase shall be counted as a part of such respective quantities so as to give to the parties at the head of the distributing laterals the quantities herein specified.

The quantity of loss or inflow provided for in this paragraph shall be determined by the water commissioner with the system in good working order and repair and in such condition as will reduce the losses to the lowest quantity practicable. Only the quantity of inflow that is available to the lands in the canal system as determined by the water commissioner shall be counted as a part of the quantity of inflow as herein specified. The allowable losses shall include only the actual, reasonable, unavoidable transmission loss, and no mechanical loss such as leaky gates, and shall extend only over a section of the canal that carries more than one irrigating stream continuously.

20. That the plaintiff and any of the defendants to the above entitled cause having the right to store in their own several reservoirs the waters of the Provo river, shall have the right to release the water so stored by them and co-mingle the same with the waters of Provo river and recapture the same at their several points of diversion, any loss in transmission to be determined by the decree to

be entered herein.

21. That the plaintiff and the defendants in the above entitled cause, having reservoirs in Wasatch or Summit counties, that appropriate and store water under applications approved by the State Engineer of the state of Utah, have the right to store quantities of water in the high or flood water season that are in excess of the quantities herein awarded; said reservoirs are also entitled to store all the waters that can be stored in them between September 15th and April 15th of each and every year.

22. It is further stipulated and agreed that the parties hereto and the several corporations to the above entitled cause in Wasatch and Summit counties that are above the upper Midway dam may at any time exchange water one with another when such exchange does not conflict with or impair the rights of the other parties to this stipulation.

23. It is further stipulated and agreed that whenever the quantity of water flowing in said river and in the canals of the parties entitled thereto is insufficient to supply the quantity of water herein specified to a class, then the persons and parties in said class entitled thereto as hereinbefore stated, shall have the same distributed to them pro-rata, according to the quantities to which they are entitled as hereinbefore stated.

24. It is further stipulated and agreed that the classes and parties herein named are entitled to the right to use the waters of said river in the order above named and no class or party in said class shall be entitled to the use of any such waters so long as the water flowing in said river and in said canals is sufficient to supply the preceding classes and parties herein with the quantity

of water to which they are entitled as hereinbefore provided.

25. It is further stipulated and agreed that for the purpose of equitably dividing and distributing the waters of said river so that the parties interested therein as herein provided, may receive the quantity to which they are entitled, none of the parties hereto ^{diverting water in which & similar Counties} shall have the right to extend the use of the waters awarded to them upon other lands than those now irrigated, so as to cause the seepage or drainage therefrom to be diverted away from the channel of said river or from the lands heretofore irrigated thereby.

March 10
~~That so long as the waters of said river in any season exceed in volume the aggregate quantity awarded to the several parties to this stipulation as herein provided, said parties are entitled to use said excess without restriction and extend the same upon other lands according to their necessities.~~

26. That for the purpose of equitably dividing and distributing the waters of said rivers so that the parties hereto may receive for use the quantity to which they are entitled, all of the waters of said river and canals shall be measured in such a way so as to include, as far as practicable, all the seepage water and inflow waters, so that the same may be distributed among the parties entitled thereto as a part and portion of the waters of said river.

27. It is further stipulated and agreed that all persons and corporations, parties to this stipulation, respectively, construct or cause to be constructed at their own expense and under the direction and supervision of the water commissioner appointed by the court, proper appliances for the diversion and accurate measurement of the waters awarded to them, respectively; and thereafter shall maintain and keep in place all dams, head-gates, flumes, canals, and other means by which water is diverted, conveyed or used,

in a good state of repair, together with appliances for the diversion and measurement of said water; to the end that no unnecessary loss from seepage or leakage shall occur, and that the water shall be economically applied to the use for which it is awarded.

28. It is further stipulated and agreed that all the rights fixed, declared and decreed shall be founded upon appropriation of water necessary for some beneficial use and that all rights fixed, declared and decreed shall be subject in their exercise to the conditions that they are required and necessary for some beneficial use, and that all rights are subject to the limitations and conditions that all of such water is used for some beneficial purpose and is used economically, without waste, with due care, and is reasonably and fairly necessary for such use.

29. It is further stipulated and agreed that each of the parties to this stipulation and his successors and assigns, and they and each of their agents, servants and employees and all persons acting for them or in their interest, shall be forever enjoined and restrained from in any manner or at all interfering one with the other in the full, free and unrestricted use of the quantity of the waters of said river awarded to them; and from in any manner or at all interfering with the distribution of said water by the commissioner appointed by the court.

30. It is further stipulated and agreed that the court shall retain original jurisdiction of this cause and the subject matter thereof, and of the parties thereto, their successors and assigns for the purpose of all necessary supplementary orders and decrees which may be required to make effectual ~~and~~ the rights the court may award by its decree herein.

31. It is further stipulated and agreed that any party to this stipulation who is dissatisfied with any of the regulations, requirements, discretionary acts of control of the distribution, or orders of the commissioners, may appeal to the court for review and relief.

32. It is stipulated that Isaac R. Baum shall have the right to change the point of diversion of the ten acres water right which was decreed in said Fulton decree to W. H. Walker from the farm formerly owned by said W. H. Walker to the farm now owned by said Isaac R. Baum, with a loss of three-tenths thereof.

33. It is understood that the parties to this stipulation are all of the parties diverting the waters of Provo river at and above the Midway upper dam, and this stipulation is not intended to affect any water right below said dam.

34. It is further stipulated and agreed that ~~in ad-~~
~~dition to~~ the areas of land ~~already~~ ^{as per report} specified in this stipu-
 lation, the ~~areas of~~ ^{owned by the parties hereto} lands owned by parties hereto,
~~so far as at present known~~ ^{entitled to water}, are as follows, to-wit:

The Wasatch Irrigation Company, 2500 acres;

The North Field Irrigation Company, 2500 acres;

The Charleston Irrigation Company, through its upper canal, 720 acres;

The Timpanogas Irrigation Company, an additional 1000 acres of land that will come under paragraph 11 of the stipulation.

South Kansas Irrigation Company, 1700 acres; 1050 650

Washington Irrigation Company, 1262 acres; 1262-acre

The Sunrise Irrigation Company, 240 acres under the
Fulton decree, an additional 144 acres, ^{11 class} making a total
acreage of 384 acres.

Feb 10-16
Stricken

The Midway Irrigation Company, under the Island ditch,
277 acres.

That all areas of land not herein specifically
stated which may not be settled by stipulation hereafter,
shall be determined in the trial of this cause at Provo.

Stenographic Transcript
of Stipulation in the
Record at Kearney City
To Madison Upper Dams

shall be determined in the trial of this cause at Iowa.
That all areas of land not herein specifically
reserved will be settled by stipulation hereafter.
SAY SORES.

The Highways Irrigation Company, under the Kansas Act,